

FINDING OF NO SIGNIFICANT IMPACT FOR THE NATIONWIDE PERMIT PROGRAM

1. Introduction:

Pursuant to Section 404(e) of the Clean Water Act, the Corps of Engineers has the authority to issue general permits on a nationwide basis for any category of activity involving discharges of dredged or fill material if the activities in that category are similar in nature and have minimal adverse environmental effects, individually or cumulatively. Nationwide permits (NWP) are a type of general permit issued by the Chief of Engineers and are designed to authorize, with little or no delay or paperwork, certain activities having minimal individual or cumulative adverse effects on the environment. (see 33 CFR 330.1 for policies concerning NWPs.)

2. Compliance with the National Environmental Policy Act:

The National Environmental Policy Act (NEPA) requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions that have a significant impact on the quality of the human environment. We have determined, based upon the reasons provided below, that the NWP program does not have a significant impact on the human environment and does not require the preparation of an EIS, because the NWP program authorizes only those activities that have minimal adverse environmental effects, individually or cumulatively, which is a much lower threshold than the EIS threshold. Moreover, the Corps NWP program has procedures, including regional conditioning and preconstruction notifications, for the vast majority of actions impacting more than 1/3 acre of waters of the United States, and case specific discretionary authority whereby the Corps districts can evaluate any particular activity which could have more than minimal adverse effects, individually or cumulatively. This, in combination with the fact that the Corps must assess whether individual or cumulative adverse effects are more than minimal on a local watershed basis, ensures that no significant individual or cumulative adverse effects on the human environment will occur. This document will comprise the Finding of No Significant Impact (FONSI) for the NWP program.

We have in the past and will continue to prepare an Environmental Assessment (EA), and, where relevant, a FONSI and/or a Section 404(b)(1) Guidelines compliance analysis for each NWP when they are issued or reissued. For each proposed new and modified NWP, we have prepared a preliminary EA, a preliminary FONSI, and where applicable, a preliminary Section 404(b)(1) Guidelines compliance analysis. Copies of these documents are available at the office of the Chief of Engineers, at each District office, and on the Corps home page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. Based on these documents, the Corps has provisionally determined that the existing and proposed NWPs comply with the requirements for issuance under general permit authority.

Although the NWP program does not require an EIS for the reasons stated in this document, the Corps intends to prepare a programmatic environmental impact statement (PEIS) for the NWP program. This voluntary preparation of a PEIS will provide the Corps with a formal mechanism to review the effects of the NWP program on the environment, with full public involvement and comment, and identify any necessary changes to the procedures, substantive content, and implementation of the NWP program that may be appropriate. The PEIS will assess the NWP program, including its individual or cumulative environmental effects, and alternative approaches to ensure that the NWPs authorize only activities that have minimal individual or cumulative adverse effects on the environment. The Corps intends to initiate the PEIS by mid-1999 and complete it by December 2000. The Corps plans to complete the PEIS prior to the next scheduled reissuance of the NWPs in December 2001.

3. Implementation of Nationwide Permit Program:

(a) General:

The implementation of the NWP program, in accordance with 33 CFR 330, does not result in a significant impact on the human environment. The Corps believes that the issuance of the NWPs, along with their terms, limitations, and general conditions, as well as regional or case-specific conditions, ensure that the authorized work will have no more than minimal adverse effects, individually or cumulatively, on the environment. It is essential that the general limits of the NWPs allow each district to cover most projects that would have minimal individual or cumulative adverse effects on the aquatic environment. At the same time, every district uses regional conditions to restrict the use of the NWPs, ensuring that no more than minimal adverse effects, individually or cumulatively, on the environment occur.

To ensure that activities authorized by NWPs have minimal individual or cumulative adverse effects, the Corps: 1) requires a specific review (i.e., a preconstruction notification for most activities that would involve more than 1/3 acre or 500 linear feet of impact to the aquatic environment) so that activity-specific conditions can be imposed where necessary; 2) adds regional conditions on a watershed, regional, or geographic basis, to ensure that activities authorized by the NWPs have minimal individual or cumulative adverse effects; or 3) exercises discretionary authority to require individual permits for those activities that have more than minimal individual or cumulative adverse effects on the aquatic environment.

(b) Preconstruction Notification:

Any of the NWPs that could involve more than minimal individual or cumulative adverse effects on the aquatic environment have preconstruction notification (PCN) requirements, which require district engineers to review proposed activities

on a case-by-case basis to ensure that they meet the terms and conditions of the NWP and result in no more than minimal individual or cumulative adverse effects on the aquatic environment. As a result of this review, district engineers may place special conditions, including compensatory mitigation, on specific projects to ensure that the authorized impacts will have minimal individual or cumulative adverse effects on the aquatic system, or assert discretionary authority to require a standard individual permit. As with all NWPs, Corps districts will continue to require that applicants avoid and minimize impacts on-site.

PCN requirements differ for each NWP. The PCN threshold is based on a level of adverse effects on the existing aquatic ecosystem that requires review by the District Engineer to ensure that those adverse effects, individually or cumulatively, are minimal. Each district will identify any areas of high value waters that require lower PCN levels to ensure minimal individual or cumulative adverse effects on the aquatic environment. Programmatically, activities that may have 1/3 acre or more impact are subject to a PCN review. With the national and district-added PCN thresholds, any activity below these limits will have minimal individual or cumulative adverse effects on the aquatic environment.

As a result of the review of a PCN, district engineers may add special conditions to an NWP authorization (see 33 CFR 330.5(d)). Special conditions are a mechanism to ensure that the individual or cumulative adverse effects of an activity are minimal. For example, special conditions may require the permittee to perform the work at certain times of the year to avoid individual or cumulative adverse effects on spawning fish or provide compensatory mitigation to offset losses of functions and values of aquatic resources to the level of minimal adverse effects, individually or cumulatively, on the aquatic environment.

(c) Regional Conditioning:

Regional conditions are an essential tool for protecting valuable aquatic resources and accounting for differences in aquatic resource functions and values across the country. A five acre loss of some relatively low value waters of the United States may constitute a minimal adverse effect in some watersheds while a 1/3 acre loss of high value aquatic resources may be more than minimal in another geographic area. High value waters, including wetlands, will receive additional protection, beyond that provided by the nationwide PCNs and thresholds, through regional conditioning of NWPs. Corps regional conditions do not supersede the general conditions of the NWP program. Regional conditions can only increase the protection of the aquatic environment. The regional conditioning process is described in 33 CFR 330.5(c). Prior to the date the proposed NWPs become effective, each Division Engineer will prepare supplemental decision documents addressing the regional conditions for each NWP. Each decision document will include a statement, by the Division Engineer, certifying that the Corps regional conditions imposed on the NWPs will ensure that those NWPs will only authorize activities that result in minimal adverse effects, individually or cumulatively, after

consideration of any compensatory mitigation the Corps may require. Division engineers can add, modify, or delete regional conditions at any time, in accordance with the procedures in 33 CFR 330.5(c).

(d) Discretionary Authority:

Division and district engineers have been delegated a discretionary authority to suspend, modify, or revoke authorizations under an NWP (see 33 CFR 330.1(d), 33 CFR 330.4(e), and 33 CFR 330.5). District engineers must assert discretionary authority and require an individual permit for those activities that they determine will have more than minimal individual or cumulative adverse effects (e.g., activities where a reasonable level of compensatory mitigation can not offset the adverse effects down to the minimal level). Activities involving individual or cumulative adverse effects that can not be reduced to the minimal level with compensatory mitigation, or where the district has identified a clearly practicable and available offsite alternative, are subject to the individual permit process. The individual permit process includes the offsite alternatives analysis, individual public notice procedures, and other aspects of individual review that help ensure that potential individual or cumulative adverse effects are fully avoided and minimized to the maximum extent practicable before an activity is authorized.

(e) Revocation of Nationwide Permits:

Division engineers can revoke any of the NWPs in aquatic environments of particularly high value or in specific geographic areas (e.g., watersheds), if they believe, based on a recommendation of a district engineer, that use of particular NWPs in these areas will result in more than minimal individual or cumulative adverse environmental effects to the aquatic ecosystem. NWPs may be revoked where districts have implemented programmatic general permits (PGPs) for similar activities, as long as the PGP provides at least the level of protection of the aquatic environment that the Corps does through its NWP program.

4. Assessment of Cumulative Adverse Effects:

Cumulative adverse effects on the aquatic environment caused by activities authorized by NWPs must be monitored and evaluated by district engineers on a watershed basis. Assessment of cumulative adverse environmental effects on a watershed basis is the only technically sound approach and must focus on essential aquatic functions and values. Since functions and values of aquatic resources vary considerably across the nation and must be monitored or assessed on a watershed basis, districts will determine whether or not more than minimal individual or cumulative adverse environmental effects will occur as a result of the NWP program. Individual districts are better suited to assess cumulative adverse environmental effects because they have a better understanding of the local conditions and processes used to evaluate whether cumulative adverse

environmental effects to the aquatic environment in a particular watershed will be more than minimal as a result of work authorized by the Corps.

5. Endangered Species:

The NWP's do not authorize any activity that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act, or to destroy or adversely affect the designated critical habitat of such species (see 33 CFR 330.4(f)). Although the Corps continues to believe the NWP program results in no effect on endangered species with the procedures currently in place, we requested formal programmatic consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) on June 24, 1997. We requested formal consultation to ensure that the NWP Program has a formal process to develop procedures which will further ensure that the program will not jeopardize the continued existence of any Federally listed endangered or threatened species. The Corps is currently developing a rule to officially promulgate the Corps scope of analysis for the Endangered Species Act (ESA). The FWS and NMFS have stated that formal ESA consultation on the NWP's will not begin until this rule is finalized and becomes effective. In the interim, Corps districts have developed, and will continue to develop, local operating procedures, as necessary, similar to those already in place, including regional condition, that ensure that districts will continue to reach a project specific may affect determination when necessary, and thus consult with FWS and NMFS, where appropriate.

6. Clean Air Act Compliance:

The NWP's have been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities authorized by the NWP program will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally can not be practicably controlled by the Corps. For these reasons a conformity determination is not required for the NWP program.

7. Need for an Environmental Impact Statement (FONSI):

Based upon the information contained in this document and the environmental assessments for each existing and proposed NWP, the NWP program has established administrative procedures that ensure that actions authorized under the program will not have significant individual or cumulative adverse effects on the quality of the human environment and the preparation of an Environmental Impact Statement is not required.

FOR THE COMMANDER

/signed/ Jun 23 1998

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